

(C) LIMITED DIVORCE.

A PERSON MAY BE PROSECUTED UNDER § 3-303, § 3-304, § 3-307, OR § 3-308 OF THIS SUBTITLE FOR A CRIME AGAINST THE PERSON'S LEGAL SPOUSE IF AT THE TIME OF THE ALLEGED CRIME THE PERSON AND THE SPOUSE LIVE APART, WITHOUT COHABITATION AND WITHOUT INTERRUPTION, UNDER A DECREE OF LIMITED DIVORCE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 27, § 464D.

In this section and throughout this subtitle, the term "against the will" is deleted as included in the reference to "without the consent". The Court of Appeals has determined that "against the will" and "without the consent" are synonymous in the law of rape. *See, e.g., State v. Rusk*, 289 Md. 230 (1981).

Throughout this section, references to "commission" of a crime are deleted as implicit in the references to a specific crime.

In subsection (b)(2) of this section, the reference to using force "in committing the crime" is added for clarity.

Defined term: "Person" § 1-101

3-317. SAME — ADMISSIBILITY OF EVIDENCE.

(A) REPUTATION AND OPINION EVIDENCE INADMISSIBLE.

EVIDENCE RELATING TO A VICTIM'S REPUTATION FOR CHASTITY AND OPINION EVIDENCE RELATING TO A VICTIM'S CHASTITY MAY NOT BE ADMITTED IN A PROSECUTION FOR RAPE, A SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE, ATTEMPTED RAPE, OR AN ATTEMPTED SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE.

(B) SPECIFIC INSTANCE EVIDENCE ADMISSIBILITY REQUIREMENTS.

EVIDENCE OF A SPECIFIC INSTANCE OF A VICTIM'S PRIOR SEXUAL CONDUCT MAY BE ADMITTED IN A PROSECUTION FOR RAPE, A SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE, ATTEMPTED RAPE, OR AN ATTEMPTED SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE ONLY IF THE JUDGE FINDS THAT:

- (1) THE EVIDENCE IS RELEVANT;
- (2) THE EVIDENCE IS MATERIAL TO A FACT IN ISSUE IN THE CASE;
- (3) THE INFLAMMATORY OR PREJUDICIAL NATURE OF THE EVIDENCE DOES NOT OUTWEIGH ITS PROBATIVE VALUE; AND
- (4) THE EVIDENCE:
 - (I) IS OF THE VICTIM'S PAST SEXUAL CONDUCT WITH THE DEFENDANT;